



Embassy Newsletter

Russell Advocaten

In this issue:

December 2018

As trusted legal advisors to many Embassies and Consulates for decades, the specialist lawyers of our Embassy desk inform you regularly on important rules and regulations regarding Dutch labour law, contract law and property law in the Netherlands.

In this newsletter we will discuss the following current topics of Dutch law:

- **Transitional compensation**
- **Immunity**



Transitional compensation

Transitional compensation

Due on dismissal by employer

In the event the employment contract has lasted at least for two years, the employer must pay the transition compensation to the employee in the event of any kind of dismissal on the employer's initiative

(termination with a UWV permission, setting aside of the contract by the subdistrict court), unless one of the exceptions mentioned under 'No or lower compensation' will apply. This rule applies to both fixed-term employment contracts as to employment contracts for an indefinite period. If the employee terminates the employment contract as a consequence of imputable acts or omissions of the employer, the employer must also pay a transition compensation.

SPECIAL SERVICE

Labour law changes almost every year. At this moment, the proposed changes include: the possibility of a 5-months probationary period, easier dismissal of permanent staff and the possibility to conclude temporary contracts for a longer period. Hence it is crucial that the employment contracts of your local staff are up to date to avoid costly inaccuracies. Russell Advocaten offers a check and report service for your employment contracts at a fixed price of EUR 300 (including VAT) per year. We can also check your staff handbook on compliance with Dutch law and the latest regulations, so you automatically can be assured about new legislation that is relevant for your contracts.

Would you like to learn more about this service? Please contact Jan Dop at +31 20 301 55 55 or jan.dop@russell.nl



Embassy Newsletter

Russell Advocaten

Calculation of transition compensation

The amount of the transition compensation depends on the length of employment (1/3 of the monthly salary per year of service over the first ten years of service and 1/2 a month's salary over the subsequent years).

The transition compensation is subject to a maximum of EUR 79,000 (as from 2019: EUR 81.000) or one year's salary if that is higher. Costs incurred for finding another job (for instance, training costs or outplacement) can be deducted from the transition compensation.

No or lower transition compensation

The employer does not have to pay a transition compensation if the employment contract expires before the age of 18 years or when the pensionable age has been reached. No transition compensation at all or a lower transition compensation is due in the event the employment contract comes to an end as a consequence of imputable acts or omissions of the employee. In addition, the transition compensation is not due if the employer has been declared bankrupt, has been granted moratorium or has been allowed to participate in a debt management scheme for natural persons.

Exception for older employees

Up until 1 January 2020, there will be transitional arrangements for older employees entitling them to a higher transition compensation. Employees 50 years or older with an employment contract of 10 years or longer with the same (or successive) employer, are entitled to one month's salary per year of service over the period following their 50th birthday (the maximum of EUR 79,000 will

remain effective though). These transitional arrangements do not apply to employers with less than 25 employees.

Transitional arrangement for SME-employers

Up until 1 January 2020, there will be a transitional arrangement for employers with less than 25 employees. Upon termination of the employment contract due to a bad financial situation of the employer, the years of service before 1 May 2013 will not be taken into account for the calculation of the length of the employment contract. If the employment contract is terminated for other reasons, the transitional arrangement will not apply and the years of service before 1 May 2013 will be considered for the calculation of the length of the employment agreement.

Fair compensation

Imputable acts or omissions

If the dismissal is due to imputable acts or omissions of the employer, the court can award the employee a fair compensation in addition to the transition compensation. The subdistrict court is free to determine the amount of fair compensation that has to be paid.

Would you like to learn what the Dutch labour laws mean for your Embassy and your personnel?

Please contact us at

embassydesk@russell.nl or

+31 20 301 55 55.



Embassy Newsletter

Russell Advocaten

Primerus

Russell Advocaten can help you resolve legal issues worldwide. As member of the International Society of Primerus Law Firms with more than 3.000 attorneys from 200 member firms in 40 countries around the globe, we are a truly global legal team - offering seamless and efficient service, wherever your legal needs may be.



Immunity

Embassies and diplomatic staff can invoke immunity from jurisdiction when acting in their public function as representative of a foreign State. Where private law is concerned, for instance, in concluding a lease contract or dismissing an employee, you can only invoke jurisdictional immunity if state security is at risk.

Remember:

- Immunity from jurisdiction does not mean that the Embassy or diplomat does not have to abide by the national law, such as labour law, real estate or contract law.
- Not having immunity from jurisdiction does not take off other forms of immunity, such as inviolability of persons, buildings and other property.

Would you like to learn more about immunity? Please contact us at 020 301 55 55 or embassydesk@russell.nl.



Russell Advocaten has a special department for legal services for Embassies and Consulates (www.embassydesk.nl). If you would like to meet with one of our specialist lawyers, we will gladly arrange a meeting at your offices. Of course, the Embassy Desk of Russell Advocaten also provides services on:

- **Investment / Doing business in the Netherlands;**
- **Labour & Employment;**
- **Immigration**
- **Buy/sell/lease real**
- **Embassies and Residences**
- For companies of your home country:
www.startingabusinessnl.com

We hope you will enjoy the festive season!

Yours sincerely,
Russell Advocaten

Jan Dop, Partner & Head of Embassy Desk
jan.dop@russell.nl
www.embassydesk.nl
+31 20 301 55 55
www.russell.nl



If a burned turkey is[®] your least concern.

You can contact Russell Advocaten at any time. Even during holidays.

Our lawyers are always available to take care of your legal issues.

As a full-service law firm, we handle a broad range of fields: corporate law, business formation and reorganization, real estate and lease law, labour and employment law and commercial litigation. A comforting thought.

www.russell.nl

RUSSELL ADVOCATEN[®]

Reimersbeek 2 • 1082 AG Amsterdam • The Netherlands
t +31 20 301 55 55 @ info@russell.nl

P Primerus
The World's Finest Law Firms